

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TIKTOK INC.,

and

BYTEDANCE LTD.,

Petitioners,

v.

MERRICK B. GARLAND, in his official
capacity as Attorney
General of the United States,

Respondent.

BRIAN FIREBAUGH, CHLOE JOY
SEXTON, TALIA CADET, TIMOTHY
MARTIN, KIERA SPANN, PAUL TRAN,
CHRISTOPHER TOWNSEND,
and STEVEN KING,

Petitioners,

v.

MERRICK B. GARLAND, in his official
capacity as Attorney
General of the United States,

Respondent.

No. 24-1113

No. 24-1130

BASED POLITICS INC.,

Petitioner,

v.

MERRICK GARLAND, in his official
capacity as Attorney General of the
United States,

Respondent.

No. 24-1183

**JOINT MOTION TO CONSOLIDATE CASES, ADOPT A
MODIFIED BRIEFING SCHEDULE, AND EXPEDITE
CONSIDERATION OF THIS MOTION**

This motion is filed jointly by the petitioners in *TikTok Inc. v. Garland*, No. 24-1113 (“TikTok Petitioners”), the petitioners in *Firebaugh v. Garland*, No. 24-1130 (“Creator Petitioners”), the petitioner in *BASED Politics Inc. v. Garland*, No. 24-1183 (“BASED Politics”) (collectively, “Petitioners”), and Respondent Merrick B. Garland. The parties respectfully ask the Court to consolidate *BASED Politics Inc. v. Garland*, No. 24-1183, with the previously consolidated *TikTok Inc. v. Garland*, No. 24-1113, and *Firebaugh v. Garland*, No. 24-1130, and to adopt a modified briefing schedule to account for BASED Politics’s briefs

in the consolidated case. In order for BASED Politics to have a sufficient amount of time to prepare its brief in advance of the parties' proposed deadline of June 27, 2024, the parties also respectfully request that the Court expedite consideration of the present motion and resolve it by June 21, 2024.

A. Consolidation

The Court has previously consolidated two cases presenting challenges to the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act (H.R. 815, div. H, 118th Cong., Pub. L. No. 118-50 (April 24, 2024)). It would be efficient and appropriate for *BASED Politics Inc. v. Garland*, No. 24-1183, which challenges the same law, to be consolidated with those cases.

B. Briefing Schedule

All parties agree that the existing schedule for briefing and argument is appropriate and should be maintained, and be modified to account for the participation of BASED Politics without delaying the proceedings.

BASED Politics is prepared to file an opening brief on June 27, 2024, one week after the briefs of the TikTok Petitioners and the Creator

Petitioners, and on the same schedule as *amicus* briefs in support of Petitioners or neither party. BASED Politics also intends to incorporate by reference, as appropriate, arguments made by the TikTok Petitioners and/or Creator Petitioners. It proposes a word limit of 6,500 words for its opening brief. BASED Politics further proposes to file a reply brief on the same schedule as the TikTok Petitioners and Creator Petitioners, with a word limit of 3,250 words. Respondent consents to the timing and word limit for the BASED Politics briefs. Respondent does not at this time request any expansion of the word limit for the government’s brief, but reserves the right to seek such relief after reviewing the Petitioners’ opening briefs.

Accordingly, the parties respectfully request that the Court modify the existing briefing schedule as follows (additions to the existing schedule in bold):

Brief of TikTok Petitioners (not to exceed 13,000 words)	June 20, 2024
Brief of Creator Petitioners (not to exceed 13,000 words)	June 20, 2024
Brief of BASED Politics (not to exceed 6,500 words)	June 27, 2024

Briefs of Amici Supporting Petitioners or Supporting Neither Party, if any (not to exceed 6,500 words)	June 27, 2024
Brief of Respondent (not to exceed 19,500 words)	July 26, 2024
Briefs of Amici Supporting Respondent, if any (not to exceed 6,500 words)	August 2, 2024
Reply Brief of TikTok Petitioners (not to exceed 6,500 words)	August 15, 2024
Reply Brief of Creator Petitioners (not to exceed 6,500 words)	August 15, 2024
Reply Brief of BASED Politics (not to exceed 3,250 words)	August 15, 2024

DATED: June 17, 2024

Andrew J. Pincus
Avi M. Kupfer
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
Telephone: 202-263-3220
Email: apincus@mayerbrown.com
akupfer@mayerbrown.com

Respectfully submitted,

/s/ Alexander A. Berengaut
Alexander A. Berengaut
David M. Zions
Megan A. Crowley
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
Telephone: (202) 662-6000
Email: aberengaut@cov.com
dzions@cov.com
mcrowley@cov.com

John E. Hall
Anders Linderot
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
Telephone: (212) 841-1000
Email: jhall@cov.com
alinderot@cov.com

Attorneys for TikTok Petitioners

Jeffrey L. Fisher
O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, California 94025
Telephone: (650) 473-2633
Email: jlfisher@omm.com

/s/ Ambika Kumar
Ambika Kumar
Tim Cunningham
DAVIS WRIGHT TREMAINE
LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Telephone: (206) 757-8030
Email: ambikakumar@dwt.com
timcunningham@dwt.com

Elizabeth A. McNamara
Chelsea T. Kelly
DAVIS WRIGHT TREMAINE
LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 489-8230
Email: lizmcnamara@dwt.com
chelseakelly@dwt.com

James R. Sigel
Adam S. Sieff
DAVIS WRIGHT TREMAINE
LLP
50 California Street, Suite 2300
San Francisco, California 94111
Telephone: (415) 276-6500
Email: jamessigel@dwt.com
adamsieff@dwt.com

Attorneys for Creator Petitioners

/s/ Jacob Huebert

Jacob Huebert

Jeffrey Schwab

James McQuaid

LIBERTY JUSTICE CENTER

13341 W. U.S. Highway 290

Building 2

Austin, Texas 78737

(512) 481-4400

jhuebert@ljc.org

jschwab@ljc.org

jmcquaid@ljc.org

Attorneys for Petitioner

BASED Politics Inc.

Brian M. Boynton
*Principal Deputy Assistant
Attorney General*

Sharon Swingle
Daniel Tenny
Casen B. Ross

/s/ Sean R. Janda
Sean R. Janda
Brian J. Springer
*Attorneys, Appellate Staff
Civil Division, Room 7260
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
(202) 514-3388*

*Attorneys for Respondent Merrick
Garland*

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 540 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point, Century Schoolbook font.

DATED: June 17, 2024

Respectfully submitted,

/s/ Alexander A. Berengaut
Alexander A. Berengaut

Attorney for TikTok Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on June 17, 2024.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: June 17, 2024

Respectfully submitted,

/s/ Alexander A. Berengaut
Alexander A. Berengaut

Attorney for TikTok Petitioners